# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 265

THE UNITED STATES, APPELLANT

vs.

CORNELL STEAMBOAT COMPANY

APPEAL FROM THE COURT OF CLAIMS

FILED JANUARY 22, 1925

(30082)

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## OCTOBER TERM, 1924.

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## No. 265

THE UNITED STATES, APPELLANT

vs.

CORNELL STEAMBOAT COMPANY

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APPEAL FROM THE COURT OF CLAIMS

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1 **In Court of Claims of the United States**

| | |
|---|---|
| CORNELL STEAMBOAT COMPANY | |
| against | PETITION. 34,628 |
| THE UNITED STATES OF AMERICA | |

I. *Petition filed June 3, 1920*

*To the honorable the Chief Justice and the Judges of the Court of Claims of the United States:*

Your petitioner, Cornell Steamboat Company, as owner of the steam tugs Ellen M. Ronan, Ira M. Hedges, S. L. Crosby, G. W. Decker, H. D. Mould, Wilson P. Foss, E. J. Foster, Victoria, J. G. Rose, Charlie Lawrence, John T. Welch, Primrose, alleges on information and belief as follows:

First. The petitioner at all the times hereinafter mentioned was, and now is, a corporation organized and existing under and by virtue of the laws of the State of New York and the owner of the steam tugs Ellen M. Ronan, Ira M. Hedges, S. L. Crosby, G. W. Decker, H. D. Mould, Wilson P. Foss, R. J. Foster, Victoria, J. G. Rose, Charlie Lawrence, Primrose and John T. Welch.

2 Second. At various times between November 21, 1917, and January 21, 1918, the petitioner let and the United States of America hired the twelve steam tugs enumerated in article first of the petition, at certain stipulated rates. The contracts for hire were time charters for extended periods and under those time charters the Government agreed to pay at a daily rate for each and every day of the charter period. Copies of letters exchanged between the petitioner and officials in the United States Army Transport Service are hereto annexed, marked Schedules A 1, 2, 3, 4; B 1, 2; C 1, 2; D 1, 2; E 1, 2; F 1, 2; G 1, 2; H 1, 2; K 1, 2, 3, and are hereby made part of this petition.

Third. The bills for hire for the months of November, 1917, and December, 1917, were duly and properly made out and presented by your petitioner for payment in accordance with the terms of the time charters and were approved and paid in full by the proper authorities of the United States. The bills for hire for the months of January, 1918, February, 1918, March, 1918, April, 1918, May, 1918, and June, 1918, were duly and properly made out in accordance with the terms of the contract and were duly presented by your petitioner for payment. These bills, however, were not paid in full but on the contrary certain deductions were made, wrongfully and improperly by the United States in violation and breach of the aforesaid charter parties.

Fourth. Claim was duly made by petitioner to the Claims
3 Board of the Transportation Service of the War Department under public act No. 322 of the 65th Congress entitled "An act

to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," for the amount wrongfully and improperly deducted and withheld by the United States of America and said claim was disallowed under date of February, 1920.

Fifth. The bills from which the aforesaid improper and wrongful deductions were made totaled $125,438.00 and the deductions aforesaid totaled $24,822.48. Recapitulated statements of accounts and a summary are hereto annexed, marked Schedules L. 1, 2, 3, 4, 5, 6 and 7, and are hereby made a part of this petition.

Sixth. Petitioner bases its claim against the United States for damages arising out of the improper and wrongful deductions from charter hire in violation and breach of the contracts referred to in the second article of this petition and its right to sue in this court by virtue of sec. 2 of public act No. 322 of the 65th Congress entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," and further on sec. 145 of the Judicial Code of the act of March 3, 1911, Ch. 231, 36 Stat. L. 1087, which provides that the United States of America may be sued in the Court of Claims for damages in cases not sounding in tort in respect of which the claimant would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable.

4 Seventh. No assignment or transfer of the claim sued on herein, or any part thereof, or interest therein, has been made. The aforesaid deductions, with interest thereon, are still unpaid and are due and owing to your petitioner from the United States.

Wherefore petitioner prays that this honorable court will find that there is now due to it the sum of $24,822.48 together with interest on $7,760.42 from January 31, 1918, on $6,533.47 from February 28, 1918, on $4,761.44 from March 31, 1918, on $4,297.15 from April 30, 1918, on $695.00 from May 31, 1918, on $775.00 from June 30, 1918, to the date of the entry of the award, and that petitioner may have such other and further relief as the court may deem just.

KIRLIN, WOOLSEY, CAMPBELL, HICKOK & KEATING,
*Attorneys for Petitioner,*
*Office and Post Office Address, 27 William Street,*
*Borough of Manhattan, City of New York.*

5 Jurat showing the foregoing was duly sworn to by Frederick Coykendall. Omitted in printing.

*Exhibits to petition*

6 SCHEDULE A 1

DEC. 1, 1917.

Captain N. J. SHELTON,
*U. S. Army Transport Service,*
*No. 104 Broad Street, City.*

DEAR SIR: We confirm our telephone conversation with your office this afternoon subsequent to writing you relative to the charter of the

tugs John T. Welch and Ellen M. Ronan, and will deliver to you 7 a. m. the steel tug Ira M. Hedges; engine fore and aft compound 14″ x 28″ x 24″, steam 125 lbs. to be chartered to you in all respects same as the tug Ellen M. Ronan at one hundred and fifty ($150) dollars per day, you to furnish coal and water.

Charter to be in all respects similar to letter of even date relative to the Ellen M. Ronan.

Yours, truly,

CORNELL STEAMBOAT CO.,
BGB:B ——— ———, *Manager.*

7 SCHEDULE A 2

DEC. 1, 1917.

Captain N. J. SHELTON,
*U. S. Army Transport Service,*
*No. 104 Broad Street, City.*

DEAR SIR:—This confirms our verbal arrangement to-day to charter to you tugs John T. Welch and Ellen M. Ronan upon the terms as follows:

Delivery at the Army piers, Hoboken, N. J., 7 a. m. December 3d, extent of time June 1st, 1918, extension of time after this date will be determined shortly before the expiration of the present charter, and will depend upon whether these tugs will be then available.

The price of the "John T. Welch" to be eighty ($80) dollars per twelve (12) hour day for each and every day of the charter period.

The price of the "Ellen M. Ronan" to be one hundred and fifty ($150) dollars per day of twenty-four (24) hours for each and every day of the charter period.

We are to furnish everything for these tugs with the exception of coal and water, which you are to furnish. It is agreed that these tugs now use anthracite pea coal which will be furnished by us and charged to you at cost price aboard tugs until such time as the tugs are equipped to burn soft coal. The mechanical cost of the equipment for soft coal will be paid for by us.

8 It is agreed that this letter will constitute the charter party until the formal one shall be entered into.

Yours truly,

CORNELL STEAMBOAT CO.
BGB:B ——— ———, *Manager.*

SCHEDULE A 3

561.1 DECEMBER 7, 1917.

GENERAL SUPERINTENDENT, U. S. A. T. S.
*Cornell Steamboat Company,*
*Pier Foot W. 51st Street, New York City.*

Tug boats.

1. Receipt is acknowledged of your favor of December 1st, regarding the tug boats "John T. Welch," "Ellen M. Ronan," and "Ira

M. Hedges," and in reply you are advised that the offers contained therein are accepted.

(Signed) A. C. DALTON,
*Colonel, Q. M. Corps.*

NJS/HKH

9 SCHEDULE A 4

561.1 OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*N. Y., December 7, 1917.*

From: General Superintendent, U. S. A. T. S.
To: Cornell Steamboat Company, Pier Ft. W. 51st Street, New York City.
Subject: Tug boats.

1. Receipt is acknowledged of your favor of December 1st, regarding tug boats "John T. Welch," "Ellen M. Ronan," and "Ira M. Hedges," and in reply you are advised that the offers contained therein are accepted.

(Signed) A. C. DALTON,
*Colonel, Q. M. Corps.*
A. W. YAHT,
*Colonel, Q. M. Corps.*
NJS.

10 SCHEDULE B 1

DECEMBER 31, 1917.

Capt. N. J. SHELTON,
*U. S. Army Transport Service,*
*104 Broad Street, New York City.*

DEAR SIR: Acting upon instructions of marine superintendent, Captain W. J. Bernard, Hoboken Army Piers, we are delivering to him January 1st, the tug "S. L. Crosby," for one day's charter, double crew, at $150, per day of twenty-four hours, we to furnish everything, with the exception of coal and water, which you will furnish. If we furnish this coal and water, we will charge it to you at the cost aboard tug.

Yours truly,

CORNELL STEAMBOAT COMPANY.

BGB:L

11 SCHEDULE B 2

545.01 OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*New York, January 1, 1918.*

From: General Superintendent, U. S. A. T. S., New York City.
To: Cornell Steamboat Co., Pier Foot West 51st St., New York City.
Subject: Tug "S. L. Crosby."

Your proposal to deliver the tug "S. L. Crosby," with double crew, etc., as contained in your letter of December 31, 1917, is accepted.

By authority of general superintendent:

N. J. SHELTON,
*Captain, A. Q. M.*

T–NY
NJS–dp.

12 SCHEDULE C1

JAN. 26, 1918.

G. H. DALZEL, Esq.,
*% Army Transport Service, Hoboken, N. J.*

DEAR SIR: In accordance with the instructions of marine superintendent, Capt. W. J. Bernard, we delivered to you to-day, January 26th, the tug "Charlie Lawrence" to work as long as you may need her, at the rate of $75, per day, we to furnish everything in connection with her operation except with the exception of coal and water. If we furnish this coal and water we will charge it to you, at cost aboard the tug.

In addition, upon instructions of Capt. Bernard, we will deliver to you to-morrow, January 27th, the tug "G. W. Decker," to work double crewed for such time as you may need her at the rate of $150 per day, you to furnish coal and water, and if we furnish the coal and water, it will be charged to you at the cost aboard the tug. Please understand that the "Charlie Lawrence" operates with a single crew.

Very truly yours,

CORNELL STEAMBOAT COMPANY,
——— ———, *Manager.*

BGB: L

13 SCHEDULE C 2

WAR DEPARTMENT,
545.01 OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*New York, Jan. 27, 1918.*

From: General Superintendent, U. S. A. T. S., New York City.
To: Cornell Steamboat Co., Pier foot West 51st St., New York City.
Subject: Tug "Geo. W. Decker."

Your proposal to deliver the tug "George W. Decker" with double crew, etc., as contained in your letter of January 26th, is accepted.

By authority of general superintendent:

N. J. SHELTON,
*Captain, A. Q. M.*

T-NY
NJS-dp

14 SCHEDULE D 1

[Copy]

DEC. 19, 1917.

Captain N. J. SHELTON,
*U. S. Army Transport Service,*
*No. 104 Broad Street, City.*

DEAR SIR: Your Captain Cogswell telephoned us to-day for an additional tug to report at the Army piers, Hoboken, for 2 or 3 days. This tug we understand to be only for temporary charter or use, so we have given you the tug *H. D. Mould* and the price will One Hundred ($100) Dollars per day of twelve (12) hours; we to furnish everything in connection with her operation.

Trusting this is satisfactory, we are
Yours truly,

CORNELL STEAMBOAT COMPANY,
——— ———, *Manager.*

BGB:B

15 SCHEDULE D 2

WAR DEPARTMENT,
OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*New York, December 21, 1917.*

From: General Superintendent Army Transport Service, 104 Broad Street, New York City.
To: Cornell Steamboat Company, Pier Ft. W. 51st Street.
Subject: Tug boat "H. D. Mould."

1. In reply to your favor of the 18th inst., regarding the use of the tug boat "H. D. Mould" at Army piers hire for two or three days, $100.00 per day, you are advised that your offer is accepted.

By authority of the general superintendent. A. T. S.

(Signed) N. J. SHELTON,
*Captain, A. Q. M.*

NJS/jlc

16 SCHEDULE E 1

DEC. 12, 1917.

Captain N. J. SHELTON,
*U. S. Army Transport Service,*
*No. 104 Broad Street, N. Y. City.*

DEAR SIR: In accordance with our telephone conversation with you, we will charter to you the tug "Wilson P. Foss" for use at the Hoboken Army Piers, for eighty ($80) dollars per day, we to furnish everything in connection with her maintenance and operation, with the exception of coal and water, which you are to furnish. The "Foss" is to operate with a single crew. The "Foss" will be delivered to the Hoboken Piers 7 a. m., Friday, December 14th. The time of charter will be indeterminate, but we will endeavor to keep her there during the winter months and as long into the spring as we can spare her. When we find that we will have to have her back we will take the matter up with you and arrange the matter satisfactory to you.

It is understood that at the present time the tug "Foss" burns anthracite pea coal and will charge you for such coal as she uses. We wil charge you the cost of the coal aboard her until such time as we are able to arrange her grate bars for using soft coal that you furnish.

The "Foss" has a single high-pressure engine 16″ x 20″, with one boiler allowed 155 pounds of steam. Her gross tons is 58,
17 length of keel 64′2″, beam 18′ and draft about 11′ aft. This boat is nearly similar in all respect to the tug John T. Welch now under charter to you at the same price.

Yours truly,

CORNELL STEAMBOAT COMPANY,
——— ———, *Manager.*

BGB:B

SCHEDULE E 2

(Copy)

WAR DEPARTMENT,
*New York, December 13th, 1917.*

545.01
From: General superintendent U. S. A. T. S.
To: Cornell Steamboat Company, pier foot W. 51st St., New York City.
Subject: Tug boat "Wilson P. Foss."

1. Your favor of December 12th, 1917, regarding price for charter of the tug boat "Wilson P. Foss" is accepted under conditions named therein.

(Signed) ——— ———,
*Colonel, Q. M. Corps.*

MJS-bkh NJS

18 SCHEDULE F 1

JAN. 11, 1918.

Capt. JOHN F. COGSWELL,
*U. S. Army Transport Service,*
*104 Broad Street, New York City.*

DEAR CAPT. COGSWELL: Acting upon the request of Capt. W. J. Bernard, marine supt., at Hoboken, we will have a double crew on the tug "R. J. Foster" tonight, so that her rate from this time on until such time as she is singled down again and in your service will be $150 per day, you to furnish the fuel, the same as the other doubled crew tugs.

In addition, we will deliver to him to-morrow upon his request the tug "W. H. Baldwin," single crew to work at $75 per day, you to furnish the fuel.

Yours truly,

CORNELL STEAMBOAT COMPANY,
——— ———, *Manager.*

BGB:L

19 SCHEDULE F 2

WAR DEPARTMENT,
OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*New York, January 25, 1918.*

From: General Superintendent, A. T. S., Hoboken, N. J.
To: Cornell Steamboat Company, Pier Ft. West 51st St., City.
Subject: Tug "R. J. Foster."

1. Your proposal of January 11th to charter the above tug at a rate of $150.00 per twenty-four hour day, from January 12th, 1918, to a date to be advised, is hereby accepted.

By authority of the general superintendent.

(Signed) W. B. BAKER,
*Director of Marine Operations.*

GHD/mb

20 SCHEDULE G 1

DECEMBER 5, 1917.

Captain N. J. SHELTON,
*U. S. Army Transport Service,*
*No. 104 Broad Street, City.*

DEAR SIR: In accordance with our telephone conversation to-day, we will deliver to you at the Army Piers at Hoboken, N. J., 7 a. m., Friday, December 7th, the tug Victoria for charter. The tug Victoria has a fore and aft compound engine 15″ x 30″ x 22″, steam 125 pounds. Time of charter to be from date of delivery until June 1st, 1918, if it is possible for us to leave her go from our service for that length of time, and at the present time we think this is possible. If we have to take her away we think we can supply something equally as good.

The price is to be one hundred and fifty ($150) dollars per day of twenty-four (24) hours for each and every day of the charter period; we to supply everything in connection with her maintenance and operation with the exception of coal and water which you are to furnish.

It is agreed that at the present time the Victoria burns anthracite pea coal and that we will furnish this coal to her and charge you at the cost price to us abroad the tug, until such time as we may be able to change her grate bars for the use of soft coal. We will pay the mechanical expense of changing the grate bars.

21 It is understood that this boat is provided with a double crew.

Yours truly,

CORNELL STEAMBOAT COMPANY,
———— ————, *Manager.*

BGB:B

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SCHEDULE G 2

WAR DEPARTMENT,
OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*New York, December 8th, 1917.*

561.15

From: General Superintendent, Army Transport Service, New York.

To: Cornell Steamboat Company, Pier Ft. West 51st St., New York.

Subject: Tug "Victoria."

1. Acknowledgment is made of your letter of December 5th.

2. You are advised that the Army Transport Service accepts your proposal of charter of the above tug at a charter rate of $150.00 per 24-hour day, from 7.00 a. m. December 7, 1917, to a date to be advised.

3. It is understood that you will supply double crew and everything in connection with her maintenance and operation with the exception of coal and water, which is to be furnished by this service.

22 It is further agreed that until such time as the grate bars are changed to permit the use of soft coal, the tug will burn anthracite pea coal, to be furnished by you at cost.

By authority of the General Superintendent.

(Signed) N. J. SHELTON,
*Captain, A. Q. M.,*
*Officer in charge Transportation Div.*

MJP/jlc

SCHEDULE H 1

DECEMBER 31, 1917.

Capt. JOHN F. COGSWELL,
*Army Transport Service,*
*104 Broad Street, New York City.*

DEAR SIR: In accordance with our telephone conversation of this morning, we are delivering the tug "J. G. Rose," to Captain Bernard, Pier 1, Hoboken Army Piers, for charter.

The tug "J. G. Rose" was built of steel in 1900.

Keel, 68'.
Beam, 19'.
Depth of hold, 8'.
Engine fore and aft, surface condensing compound, 13" x 29" x 18" stroke.
Power pressure, 155 lbs.

23 It is agreed that we are to furnish her with a double crew for twenty-four (24) hours service and to find everything in connection with her operation, with the exception of coal and water which you are to furnish. The price is one hundred and fifty ($150) dollars, per day of twenty-four hours, for each and every day of the charter.

Date of delivery, December 31, 1917.
Date of expiration of charter, Apr. 1, 1918.

At the time of the expiration, we will determine whether or not it is possible for us to leave her further in your service, or endeavor to replace her with some tug that will do the work as well.

It is agreed that the tug "J. G. Rose," at present burns anthracite pea coal, and that pending the time we are arranging to and installing grate bars which will permit the burning of soft coal, we are to furnish the necessary pea coal, or its equivalent, and charge you for such coal, which she may use during this period, at the cost to us aboard the tug.

It is agreed that the tug "J. G. Rose" shall be allowed one (1) day in each thirty (30) to wash boiler, and that this wash boiler day shall be paid for at the foregoing rate of hire.

It is agreed that we are both familiar with the Government and Army regulations relative to the hours of service for the tug and crew, and that both tug and crew shall be allowed the necessary time off, as has been provided, but, however it is agreed that the
24 tug and crew are subject to the orders of the Army Transport Service for all work they may be required to do.

Yours truly,

CORNELL STEAMBOAT CO.
——— ———, *Manager.*

BGB:L

SCHEDULE H 2

WAR DEPARTMENT,
OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE.
*New York, January 21st, 1918.*

From: General Superintendent, A. T. S., 104 Broad Street, New York City.

To: Cornell Steamboat Co., Pier Foot West 51st St., New York City.

Subject: Tug "J. G. Rose."

1. Your proposal of December 31st, 1917, to charter the above tug to the Army Transport Service from date of delivery, December 31st, 1917, to March 31, 1918, at a rate of $150.00 per twenty-four hour day, coal and water to be furnished by this service, is hereby accepted.

By authority of the General Sup., A. T. S.

(Signed) G. W. K.,
*Captain, Q. M. R. C.*

GHD/wcr
T-NY

25 SCHEDULE K 1

Nov. 21, 1917.

Captain N. J. SHELTON,
*Army Transport Service,*
*No. 104 Broad Street, New York City.*

DEAR SIR:—We confirm our verbal arrangements of to-day to charter to you the tug "Primrose," engine 16″ x 20″, steam 155 pounds and the tug "Charlie Lawrence," engine 18″ x 18″, steam 140 pounds, with a single crew and everything found, excepting coal and water, which you are to furnish, at the rate of seventy-five ($75.00) dollars, for each and every day, per tug, beginning seven a. m. November 22nd, 1917.

It is understood that these two tugs are placed in service on trial for several days and if they meet with your requirements formal

charter party is to be executed for the hire of these tugs by you continually until June 1st, 1918, at the same rate, with a privilege of renewal after that date.

Yours truly,

CORNELL STEAMBOAT CO.
————————, *Manager.*

BGB:B

26 SCHEDULE K 2

(Copy)

Nov. 22, 1917.

Captain N. J. SHELTON,
*Army Transport Service,*
*No. 104 Broad Street, New York City.*

DEAR SIR:—The tugs "Charlie Lawrence" and "Primrose" normally burn anthracite pea coal and not bituminous coal, which you furnish. Their present grates are arranged for hard coal. Inasmuch as these two boats are in your service to-day, as per our letter of November 21st, on a trial basis, we suggest that we furnish the coal during this trial and charge it to you at cost to us, aboard the tug. Then if these tugs prove satisfactory and you wish to make a charter for a period of time we will change the grates for soft coal.

Please advise if this is satisfactory to you.

Yours truly,

CORNELL STEAMBOAT COMPANY,
————————, *Manager.*

BGB:B

27 SCHEDULE K 3

(Copy)

WAR DEPARTMENT,
*N. Y., November 24, 1917.*

General Superintendent, U. S. A. T. S.

To: Cornell Steamboat Company, New York City.
Sub: Tug boats "Primrose" and "Charlie Lawrence."

1. Your favor of November 21st, offering the tug boats "Primrose" and "Charlie Lawrence" for charter to the Army Transport Service has been received and accepted according to the conditions stated in your letter.

2. In this connection and in reference to your letter of November 22nd, you are advised that it is agreeable to this office that you delay changing the grate bars in two (2) tugs mentioned, and that you supply coal at cost price to the Government while these boats are undergoing trial.

By authority of the General Superintendent, U. S. A. T. S.

(Signed) N. J. SHELTON,
*Captain, A. Q. M.*

NJS–bkh

28

## SCHEDULE L 1

*Statement of accounts of Cornell Steamboat Company for hire of tugs to Army Transport Service, New York*

| | Total of bill | Amount paid | Balance due |
|---|---|---|---|
| January, 1918 | $38,995.00 | $31,234.58 | $7,760.42 |
| February, 1918 | 31,512.00 | 24,978.53 | 6,533.47 |
| March, 1918 | 32,459.00 | 27,697.56 | 4,761.44 |
| April, 1918 | 10,837.50 | 6,540.35 | 4,297.15 |
| May, 1918 | 5,858.00 | 5,163.00 | 695.00 |
| June, 1918 | 5,776.50 | 5,001.50 | 775.00 |
| | 125,438.00 | 100,615.52 | 24,822.48 |

29

## SCHEDULE L 2

*Statement of accounts of Cornell Steamboat Company for hire of tugs to Army Transport Service, New York, January, 1918*

| Tug | Total | Amount paid | Amount due |
|---|---|---|---|
| Ellen M. Ronan | $5,863.50 | $4,663.50 | $1,200.00 |
| Ira M. Hedges | 5,112.50 | 1,662.50 | 3,450.00 |
| S. L. Crosby | 216.50 | 141.50 | 75.00 |
| G. W. Decker | 799.50 | 724.50 | 75.00 |
| H. D. Mould | 2,484.00 | 1,892.33 | 591.67 |
| Wilson P. Foss | 3,103.50 | 2,699.25 | 406.25 |
| R. J. Foster | 3,438.50 | 3,138.50 | 300.00 |
| Victoria | 5,735.50 | 5,185.50 | 550.00 |
| J. G. Rose | 5,350.50 | 4,563.00 | 787.50 |
| Charlie Lawrence | 1,502.00 | 1,352.00 | 150.00 |
| Primrose | 5,389.00 | 5,214.00 | 175.00 |
| | 38,995.00 | 31,234.58 | 7,760.42 |

30

## SCHEDULE L 3

*Statement of accounts of Cornell Steamboat Company for hire of tugs to Army Transport Service, New York, during February, 1918*

| Tug | Total | Paid by Government | Due |
|---|---|---|---|
| Foss, W. P | $2,678.50 | $2,438.50 | $240.00 |
| Foster, R. J | 2,571.00 | 2,271.00 | 300.00 |
| Hedges, Ira M | 4,200.00 | 600.00 | 3,600.00 |
| Mould, H. D | 2,800.00 | 2,100.28 | 699.72 |
| Primrose | 4,988.50 | 4,032.25 | 956.25 |
| Ronan, E. M | 4,466.50 | 4,104.00 | 362 50 |
| Rose, J. G | 4,725.00 | 4,650.00 | 75.00 |
| Victoria | 5,082.50 | 4,782.50 | 300.00 |
| | 31,512.00 | 24,978.53 | 6,533.47 |

31

## SCHEDULE L 4

*Statement of accounts of Cornell Steamboat Company for hire of tugs to Army Transport Service, New York, during March, 1918*

| Tug | Total | Paid by Govt. | Due |
|---|---|---|---|
| Foss, W. P | $3,019.50 | $2,436.17 | $583.33 |
| Foster, R. J | 2,908.00 | 2,583.00 | 325.00 |
| Hedges, Ira M | 4,686.00 | 4,123.50 | 562.50 |
| Primrose | 5,767.50 | 4,986.25 | 781.25 |
| Ronan, E. M | 4,689.00 | 4,035.88 | 653.12 |
| Rose, J. G | 5,717.00 | 4,907.63 | 809.37 |
| Victoria | 5,672.00 | 4,625.13 | 1,046.87 |
| | 32,459.00 | 27,697.56 | 4,761.44 |

32

## SCHEDULE L 5

*Statement of accounts of Cornell Steamboat Company for hire of tugs to Army Transport Service, New York, during April, 1918*

| Tug | Total | Paid by Govt. | Due |
|---|---|---|---|
| Foss, W. P | $2,932.50 | $2,166.60 | $765.90 |
| Foster, R. J | 2,805.00 | 1,980.00 | 825.00 |
| Hedges, I. M | 1,666.50 | 541.50 | 1,125.00 |
| Ronan, E. M | 1,666.50 | 1,579.00 | 87.50 |
| Primrose | 1,767.00 | 273.25 | 1,493.75 |
| | 10,837.50 | 6,540.35 | 4,297.15 |

## SCHEDULE L 6

*Statement of accounts of Cornell Steamboat Company for hire of tugs to Army Transport Service, New York, during May, 1918*

| Tug | Total | Paid by Govt. | Due |
|---|---|---|---|
| Foss, W. P | $2,999.00 | $2,679.00 | $320.00 |
| Foster, R. J | 2,859.00 | 2,484.00 | 375.00 |
| | 5,858.00 | 5,163.00 | 695.00 |

33

## SCHEDULE L 7

*Statement of accounts of Cornell Steamboat Company for hire of tugs to Army Transport Service, New York, during June, 1918*

| Tug | Total | Paid by Govt. | Due |
|---|---|---|---|
| Foss, W. P | $2,902.50 | $2,502.50 | $400.00 |
| Foster, R. J | 2,874.00 | 2,499.00 | 375.00 |
| | 5,776.50 | 5,001.50 | 775.00 |

Foster includes July 1st, when charter expired.

34 II. *General traverse. Entered Aug. 9, 1920*

No demurrer, plea, answer, counterclaim, setoff, claim of damages, demand, or defense in the premises having been entered on the part of the defendant a general traverse is entered as provided by Rule 34.

III. *History of proceedings*

On December 12, 1922, this case was argued and submitted on merits by Mr. Robert S. Erskine, for plaintiff, and by Mr. William L. Cole, for defendant.

On June 4, 1923, the court filed an order remanding the case to the calendar, and allowed both parties to take testimony.

IV. *Argument and submission of case*

On October 8, 1923, this case was argued and submitted by Mr. Robert S. Erskine, for the plaintiff, and submitted without argument by Mr. William S. Cole, for defendant.

35 IV. *Finding of fact, conclusion of law, opinion of the court, by Hay, J., and appendix to court's findings, entered Oct. 29, 1923*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of fact

I

The plaintiff, the Cornell Steamboat Co., is a corporation organized under the laws of the State of New York and at the times hereinafter mentioned was the owner of the tugs, "Ellen M. Ronan," "Ira M. Hodges," "S. L. Crosby," "G. W. Decker," "H. D. Mould," "Wilson P. Foss," "R. J. Foster," "Victoria," "John G. Rose," "Charlie Lawrence," "Primrose," and "John T. Welch."

II

Captain N. J. Shelton on November 8, 1917, was the officer in charge of the transportation division with the general superintendent of the Army Transport Service and as such officer was authorized to contract for the hire of tugs for the use of the United States in New York Harbor. Bruce G. Broad was the general manager of the plaintiff company and as such was authorized to make contracts for the use of tugs belonging to the plaintiff company. On November

21, 1917, and on November 22, 1917, the plaintiff company wrote the following letters to Captain N. J. Shelton:

NOVEMBER 21, 1917.

Captain N. J. SHELTON,
*Army Transport Service,*
*No. 104 Broad Street, New York City.*

DEAR SIR: We confirm our verbal arrangements of to-day to charter to you the tug "Primrose," engine 16″ x 20″, steam 155 pounds and the tug "Charlie Lawrence," engine 18″ x 18″, steam 140 pounds, with a single crew and everything found, excepting coal and water, which you are to furnish, at the rate of seventy-five ($75.00)
36 dollars, for each and every day, per tug, beginning seven a. m. November 22nd, 1917.

It is understood that these two tugs are placed in service on trial for several days and if they meet with your requirements formal charter party is to be executed for the hire of these tugs by you continually until June 1st, 1918, at the same rate, with a privilege of renewal after that date.

Yours truly,

CORNELL STEAMBOAT CO.,
——— ———, *Manager.*

BGB:B.

NOVEMBER 22, 1917.

Captain N. J. SHELTON,
*Army Transport Service,*
*No. 104 Broad Street, New York City.*

DEAR SIR: The tugs "Charlie Lawrence" and "Primrose" normally burn anthracite pea coal and not bituminous coal, which you furnish. Their present grates are arranged for hard coal. Inasmuch as these two boats are in your service to-day, as per our letter of November 21st, on a trial basis, we suggest that we furnish the coal during this trial and charge it to you at cost to us, aboard the tug. Then if these tugs prove satisfactory and you wish to make a charter for a period of time we will change the grates for soft coal.

Please advise if this is satisfactory to you.

Yours truly,

CORNELL STEAMBOAT CO.,
——— ———, *Manager.*

BGB: B.

To these letters Captain Shelton replied as follows:

NEW YORK, *November 24, 1917.*

General Superintendent, U. S. A. T. S.
To: Cornell Steamboat Company, New York City.
Sub: Tug boats "Primrose" and "Charlie Lawrence."

1. Your favor of November 21st, offering the tug boats "Primrose" and "Charlie Lawrence" for charter to the Army Transport Service,

has been received and accepted according to the conditions stated in your letter.

2. In this connection and in reference to your letter of November 22nd, you are advised that it is agreeable to this office that you delay changing the grate bars in two (2) tugs mentioned, and that you supply coal at cost price to the Government while these boats are undergoing trial.

By authority of the General Superintendent, U. S. A. T. S.

(Signed) N. J. SHELTON,
*Captain, A. Q. M.*

NJS–bkh.

The tug "Primrose" was in the service of the Government continuously from January 1, 1918, to April 11, 1918, a period
37 of 101 days. Six days of this time the "Primrose" was a 12-hour day tug at $75 per day, and the residue of the time was a 24-hour day tug at $150 per day.

The tug "Charlie Lawrence" was in the service of the United States 13 days in January, 1918.

On December 1, 1917, the plaintiff company wrote the following letter to Captain N. J. Shelton:

DECEMBER 1, 1917.

Captain N. J. SHELTON,
*U. S. Army Transport Service,*
*No. 104 Broad Street, City.*

DEAR SIR: This confirms our verbal arrangement to-day to charter to you the tugs "John T. Welch" and "Ellen M. Ronan" upon the terms as follows:

Delivery at the Army Piers, Hoboken, N. J., 7 a. m. December 3d, extent of time June 1st, 1918; extension of time after this date will be determined shortly before the expiration of the present charter, and will depend upon whether these tugs will be then available.

The price of the "John T. Welch" to be eighty ($80) dollars per twelve (12) hour day for each and every day of the charter period.

The price of the "Ellen M. Ronan" to be one hundred and fifty ($150) dollars per day of twenty-four (24) hours for each and every day of the charter period.

We are to furnish everything for these tugs with the exception of coal and water, which you are to furnish. It is agreed that these tugs now use anthracite pea coal, which will be furnished by us and charged to you at cost price aboard tugs until such time as these tugs are equipped to burn soft coal. The mechanical cost of the equipment for soft coal will be paid for by us.

It is agreed that this letter will constitute the charter party until the formal one shall be entered into.

Yours truly,

CORNELL STEAMBOAT CO.
———— ————, *Manager.*

BGB:B

To this letter the following replies were sent:

DECEMBER 7, 1917.

561.1
General Superintendent, U. S. A. T. S.
Cornell Steamboat Company, Pier Foot W. 51st Street, New York City.
Tugboats.

1. Receipt is acknowledged of your favor of December 1st, regarding the tugboats "John T. Welch," "Ellen M. Ronan," and "Ira M. Hedges," and in reply you advised that the offers contained therein are accepted.

(Signed) A. C. DALTON.
*Colonel, Q. M. Corps.*

NJS/HKH
38

OFFICE OF THE GENERAL SUPERINTENDENT
U. S. ARMY TRANSPORT SERVICE,
*New York, December 7, 1917.*

561.1
From: General Superintendent, U. S. A. T. S.
To: Cornell Steamboat Company, Pier Ft. W. 51st Street, New York City.
Subject: Tugboats.

1. Receipt is acknowledged of your favor of December 1st, regarding tugboats "John T. Welch," "Ellen M. Ronan," and "Ira M. Hedges," and in reply you are advised that the offers contained therein are accepted.

(Signed) A. C. DALTON,
*Colonel, Q. M. Corps.*
A. W. YAHT,
*Colonel, Q. M. Corps.*

NJS

The tug "Ellen M. Ronan" was in the service of the Government continuously from January 1, 1918, to April 11, 1918, a period of 101 days.

The tug "Ira M. Hedges" was in the service of the Government continuously from January 1, 1918, to April 11, 1918, a period of 101 days, and was during this time a 24-hour day tug at $150 per day.

In accordance with the contract, these tugs were delivered at the Army piers, Hoboken, N. J., seven a. m., December 3d.

On December 5, 1917, the plaintiff company wrote the following letter to Captain N. J. Shelton:

DECEMBER 5, 1917.

Captain N. J. SHELTON,
*U. S. Army Transport Service,*
*No. 104 Broad Street, City.*

DEAR SIR: In accordance with our telephone conversation to-day, we will deliver to you at the Army piers at Hoboken, N. J., 7 a. m.,

Friday, December 7th, the tug "Victoria" for charter. The tug "Victoria" has a fore and aft compound engine 15" x 30" x 22", steam 125 pounds. Time of charter to be from date of delivery until June 1st, 1918, if it is possible for us to leave her go from our service for that length of time, and at the present time we think this is possible. If we have to take her away we think we can supply something equally as good.

The price is to be one hundred and fifty ($150) dollars per day of twenty-four (24) hours for each and every day of the charter period; we to supply everything in connection with her maintenance and operation with the exception of coal and water, which you are to furnish.

It is agreed that at the present time the "Victoria" burns anthracite pea coal and that we will furnish this coal to her and charge you at the cost price to us aboard the tug, until such time as we
39 may be able to change her grate bars for the use of soft coal. We will pay the mechanical expense of changing the grate bars.

It is understood that this boat is provided with a double crew.

Yours truly,

CORNELL STEAMBOAT COMPANY.
———— ————, *Manager.*

BGB:B

To this letter Captain Shelton replies as follows:

OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE.
*New York, December 8, 1917.*

561.15

From: General Superintendent, Army Transport Service, New York.

To: Cornell Steamboat Company, Pier Ft. West 51st St., New York.

Subject: Tug "Victoria."

1. Acknowledgement is made of your letter of December 5th.

2. You are advised that the Army Transport Service accepts your proposal of charter of the above tug at a charter rate of $150.00 per 24-hour day, from 7.00 a. m. December 7, 1917, to a date to be advised.

3. It is understood that you will supply double crew and everything in connection with her maintenance and operation with the exception of coal and water, which is to be furnished by this service.

It is further agreed that until such time as the grate bars are changed to permit the use of soft coal, the tug will burn anthracite pea coal, to be furnished by you at cost.

By authority of the general superintendent.

(Signed) N. J. SHELTON,
*Captain, A. Q. M.,*
*Officer in charge Transportation Div.*

MJP/jlc

The tug "Victoria" was in the service of the Government continuously from January 1 to March 31, 1918, inclusive.

On December 19, 1917, the plaintiff wrote the following letter to Captain N. J. Shelton:

DECEMBER 19, 1917.

Captain N. J. SHELTON,
*U. S. Army Transport Service,*
*No. 104 Broad Street, City.*

DEAR SIR: Your Captain Cogswell telephoned us to-day for an additional tug to report at the Army Piers, Hoboken, for 2 or 3 days. This tug we understand to be only for temporary charter or use, so we have given you the tug "H. D. Mould" and the price will be one hundred ($100) dollars per day of twelve (12) hours; we to furnish everything in connection with her operation.

Trusting this is satisfactory, we are,

Yours truly,

CORNELL STEAMBOAT COMPANY,
——— ———, *Manager.*

BGB:B

To this letter Captain Shelton replies as follows:

OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*New York, December 21, 1917.*

From: General Superintendent, Army Transport Service, 104 Broad Street, New York City.
To: Cornell Steamboat Company, Pier Ft. W. 51st Street.
Subject: Tug boat "H. D. Mould."

1. In reply to your favor of the 18th inst., regarding the use of the tug boat "H. D. Mould" at Army Piers hire for two or three days, $100.00 per day, you are advised that your offer is accepted.

By authority of the general superintendent, A. T. S.

(Signed) N. J. SHELTON,
*Captain, A. Q. M.*

NJS/jlc

The tug "H. D. Mould" was in the service of the Government 23 days in January and 28 days in February, 1918.

On December 12, 1917, the plaintiff company wrote the following letter to Captain N. J. Shelton:

DECEMBER 12, 1917.

Captain N. J. SHELTON,
*U. S. Army Transport Service,*
*No. 104 Broad Street, N. Y. City.*

DEAR SIR: In accordance with our telephone conversation with you, we will charter to you the tug "Wilson P. Foss," for use at the Hoboken Army Piers, for eighty (80) dollars per day; we to furnish everything in connection with her maintenance and operation, with the exception of coal and water, which you are to furnish. The "Foss" is to operate with a single crew. The "Foss" will be de-

livered to the Hoboken Piers 7 a. m., Friday, December 14th. The time of charter will be indeterminate, but we will endeavor to keep her there during the winter months, and as long into the spring as we can spare her. When we find that we will have to have her back we will take the matter up with you and arrange the matter satisfactory to you.

It is understood that at the present time the tug "Foss" burns anthracite pea coal and will charge you for such coal as she uses. We will charge you the cost of the coal aboard her until such time as we are able to arrange her grate bars for using soft coal that you furnish.

The "Foss" has a single high-pressure engine 16″ x 20″, with one boiler allowed 155 pounds of steam. Her gross tons is 58, length of keel 64′2″, beam 18′ and draft about 11′ aft. This boat is nearly similar in all respects to the tug "John T. Welch" now under charter to you at the same price.

Yours truly,

CORNELL STEAMBOAT COMPANY.
———— ————, *Manager.*

BGB:B

41 To this letter the following reply was sent:

NEW YORK, *December 13, 1917.*

545.01
From: General Superintendent, U. S. A. T. S.
To: Cornell Steamboat Company, Pier foot W. 51st St., New York City.
Subject: Tugboat "Wilson P. Foss."

1. Your favor of December 12th, 1917, regarding price for charter of the tugboat "Wilson P. Foss" is accepted under conditions named therein.

(Signed) ————— ————,
*Colonel, Q. M. Corps.*
NJS

MJS-bkh

The tug "Wilson P. Foss" was in the service of the Government 180 days from January 2d to July 1, 1918.

On December 31, 1917, the plaintiff company wrote the following letter to Captain John F. Cogswell:

DECEMBER 31, 1917.

Capt. JOHN F. COGSWELL,
*Army Transport Service,*
*104 Broad Street, New York City.*

DEAR SIR: In accordance with our telephone conversation of this morning, we are delivering the tug "J. G. Rose" to Captain Bernard, Pier 1, Hoboken Army Piers, for charter.

The tug "J. G. Rose" was built of steel in 1900.
Keel, 68′.
Beam, 19′.
Depth of hold, 8′.

Engine fore and aft, surface condensing compound, 13″ x 29″ x 18″ stroke.

Power pressure, 155 lbs.

It is agreed that we are to furnish her with a double crew for twenty-four (24) hours' service and to find everything in connection with her operation, with the exception of coal and water which you are to furnish. The price is one hundred and fifty ($150) dollars, per day of twenty-four hours, for each and every day of the charter.

Date of delivery, December 31, 1917.

Date of expiration of charter, Apr. 1, 1918.

At the time of the expiration we will determine whether or not it is possible for us to leave her further in your service, or endeavor to replace her with some tug that will do the work as well.

It is agreed that the tug "J. G. Rose" at present burns anthracite pea coal, and that pending the time we are arranging to and installing grate bars, which will permit the burning of soft coal, we are to furnish the necessary pea coal or its equivalent, and charge you for such coal, which she may use during this period, at the cost to us aboard the tug.

It is agreed that the tug "J. G. Rose" shall be allowed one (1) day in each thirty (30) to wash boiler, and that this wash-boiler day shall be paid for at the foregoing rate of hire.

42 It is agreed that we are both familiar with the Government and Army regulations relative to the hours of service for the tug and crew, and that both tug and crew shall be allowed the necessary time off, as has been provided, but, however, it is agreed that the tug and crew are subject to the orders of the Army Transport Service for all work they may be required to do.

Yours truly,

CORNELL STEAMBOAT CO.,
——— ———, *Manager.*

BGB:L

To this letter the following reply was sent:

WAR DEPARTMENT,
OFFICE OF THE GENERAL SUPERINTENDENT.
U. S. ARMY TRANSPORT SERVICE.
*New York, January 21, 1918.*

From: General Superintendent, A. T. S., 104 Broad Street, New York City.

To: Cornell Steamboat Co., Pier foot West 51st St., New York City, Subject: Tug "J. G. Rose."

1. Your proposal of December 31st, 1917, to charter the above tug to the Army Transport Service from date of delivery, December 31st, 1917, to March 31, 1918, at a rate of $150.00 per twenty-four hour day, coal and water to be furnished by this service, is hereby accepted.

By authority of the General Sup. A. T. S.

(Signed) G. W. K.,
*Captain, Q. M. R. C.*

T-NY GHD/wcr

The tug "J. G. Rose" was in the service of the Government 90 days from January 1, 1918, to March 31, 1918. She was delivered in accordance with provisions of the contract.

On December 31, 1917, the plaintiff company wrote the following letter to Captain N. J. Shelton:

DECEMBER 31, 1917.

Capt. N. J. SHELTON,
*U. S. Army Transport Service,*
*104 Broad Street, New York City.*

DEAR SIR: Acting upon instructions of Marine Superintendent, Captain W. J. Bernard, Hoboken Army Piers, we are delivering to him January 1st the tug "S. L. Crosby," for one day's charter, double crew, at $150 per day of twenty-four hours, we to furnish everything, with the exception of coal and water, which you will furnish. If we furnish this coal and water, we will charge it to you at the cost aboard tug.

Yours truly,

CORNELL STEAMBOAT COMPANY.

BGB:L

43 To this letter Captain N. J. Shelton replied as follows:

OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*New York, January 1, 1918.*

545.01
From General Superintendent, U. S. A. T. S., New York City.
To: Cornell Steamboat Co., Pier Foot West 51st St., New York City.
Subject: Tug S. L. Crosby.

Your proposal to deliver the tug "S. L. Crosby," with double crew, etc., as contained in your letter of December 31, 1917, is accepted.

By authority of General Superintendent:

N. J. SHELTON,
*Captain, A. Q. M.*

T–NY NJS–dp.

The tug "S. L. Crosby" was in the service of the Government for one day in January, 1918.

On January 11, 1918, the plaintiff company wrote the following letter to Captain John F. Cogswell:

JANUARY 11, 1918.

Capt. JOHN F. COGSWELL,
*U. S. Army Transport Service,*
*104 Broad Street, New York City.*

DEAR CAPT. COGSWELL: Acting upon the request of Capt. W. J. Bernard, Marine Supt., at Hoboken, we will have a double crew on the tug "R. J. Foster" tonight, so that her rate from this time on until such time as she is singled down again, and in your service, will be $150 per day, you to furnish the fuel, the same as the other doubled crew tugs.

In addition we will deliver to him to-morrow upon his request, the tug "W. H. Baldwin," single crew to work at $75 per day, you to furnish the fuel.

Yours truly,

CORNELL STEAMBOAT COMPANY,
——— ———, *Manager.*

BGB:L

To this letter the following reply was sent:

OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*New York, January 25, 1918.*

From: General Superintendent, A. T. S., Hoboken, N. J.
To: Cornell Steamboat Company, Pier Ft. West 51st St., City.
Subject: Tug R. J. Foster.

1. Your proposal of January 11th to charter the above tug at a rate of $150.00 per twenty-four hour day, from January 12th, 1918, to a date to be advised, is hereby accepted.

By authority of the General Superintendent.

(Signed) W. B. BAKER,
*Director of Marine Operations.*

GHD/mb

The tug "R. J. Foster" was in the service of the Government continuously for 197 days from January 6, 1918, to July 1, 1918.

44 On January 26, 1918, the plaintiff company wrote the following letter to G. H. Dalzell:

JANUARY 26, 1918.

G. H. DALZELL, Esq.,
*% Army Transport Service, Hoboken, N. J.*

DEAR SIR: In accordance with instructions of Marine Superintendent, Capt. W. J. Bernard, we delivered to you to-day, January 26th, the tug "Charlie Lawrence" to work as long as you may need her, at the rate of $75 per day, we to furnish everything in connection with her operation with the exception of coal and water. If we furnish this coal and water we will charge it to you, at cost aboard the tug.

In addition, upon instructions of Capt. Bernard, we will deliver to you to-morrow January 27th, the tug "G. W. Decker," to work double crewed for such time as you may need her at the rate of $150 per day, you to furnish coal and water, and if we furnish the coal and water, it will be charged to you at the cost aboard the tug. Please understand that the "Charlie Lawrence" operates with a single crew.

Very truly yours,

CORNELL STEAMBOAT COMPANY,
——— ———, *Manager.*

BGB:L

To this letter the following reply was sent:

OFFICE OF THE GENERAL SUPERINTENDENT,
U. S. ARMY TRANSPORT SERVICE,
*New York, January 27, 1918.*

545.01
From: General Superintendent, U. S. A. T. S., New York City.
To: Cornell Steamboat Co., Pier Foot West 51st St., New York City.
Subject: Tug "Geo. W. Decker."

Your proposal to deliver the tug "George W. Decker" with double crew, etc., as contained in your letter of January 26th, is accepted.

By authority of General Superintendent:

N. J. SHELTON,
*Captain, A. Q. M.*

T-NY NJS-dp

The tug "G. W. Decker" was in the service of the Government four days in January, 1918.

III

All of the tugs hereinbefore enumerated reported for service in accordance with the contract. The plaintiff company rendered its bills monthly and for a full monthly period at a rate per day stated in the contract. The defendant paid the bills as they were rendered for the month of December, 1917, and thereafter for each month refused to pay the full amount claimed and deducted therefrom the various sums shown in the table found on page 114 of the record and which is attached as an appendix to this finding, making a total deduction of $24,822.48. The deductions made were in conformity with the logs of the vessels. Said logs were kept by the captains and engineers of the boats and were directed to be kept by the
45 marine superintendent, Army Transport Service, who had charge of the boats, and these logs were made off on blanks furnished to the captains and engineers of the boats by the aforesaid marine superintendent.

It appears that these deductions were made if a boat reported with a short crew or not in condition to perform the service required and if too long a time was consumed in the opinion of the officer in charge when taking on supplies. The plaintiff received due notice of the aforesaid deductions and rendered its bills for the full service, setting out the deductions and protesting their allowance and accepting the decreased payments under express protest in each instance.

IV

The tug "Ira Hedges," while in the service of the Government and under its control, sank while towing a barge of coal from Perth Amboy, N. J., to the Erie Basin Dry Dock. The plaintiff was notified of this accident, and at its own expense raised the vessel, repaired it, and it was subsequently used by the defendant. A deduction was made for loss of time due to this accident.

V

During the time when the tugs hereinbefore mentioned were in the service of the Government, the Army Transport Service had the entire use of the tugs and they were subject at all times to the orders and directions of the officers of the Government, and at no time during the period did the plaintiff have the use of and did not in any way interfere with or direct the operations of the said tugs.

VI

The plaintiff rendered its bills for the use of these tugs for January, February, April, March, May, and June, 1918. Its bills for service amounted to the sum of $125,438; it was paid $100,615.52, leaving the balance, which has not been paid, $24,822.48.

Conclusion of law

Upon the foregoing findings of fact the court decides as a conclusion of law that the plaintiff is entitled to recover. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of twenty-four thousand eight hundred and twenty-two dollars and forty-eight cents ($24,822.48).

Opinion

HAY, judge, delivered the opinion of the court:

This is a suit by the plaintiff to recover from the United States the sum of $24,822.48, alleged by the plaintiff to be due it on account of deductions made by the United States from the hire of certain steam tugs chartered by the Government from the plaintiff for certain periods of time from November, 1917, to June, 1918.

46 The contract is set out in letters which were written by the parties. These letters are set out in full in the findings of the court. In the letter of the plaintiff of December, 1917, the following occurs: "It is agreed that this letter will constitute the charter party until the formal one shall be entered into." On December 7, 1917, the defendant in a letter of that date accepted the proposition of the plaintiff. All the boats hired by the Government were hired upon the same terms, and it was provided in the contract that the per diem hire should be paid to the plaintiff for each and every day of the charter period. These tugs were hired by the Government for different periods of time, and the time of hire of each tug is set out in the findings of the court.

The tugs reported for service in accordance with the contract. The plaintiff rendered its bills monthly and for a full monthly period at a rate per day stated in the contract. The defendant paid the bills as they were rendered for the month of December, 1917, and thereafter refused to pay the full amount claimed and deducted

therefrom various sums, which sums make up the amount of the plaintiff's claim. The deductions were made in conformity with the logs of the vessels. These logs were kept by the captains and engineers of the boats, and were directed to be kept by the marine superintendent, Army Transport Service, who had charge of the boats, and these logs were kept on blanks furnished by the marine superintendent, an officer of the defendant.

During the time when these tugs were in the service of the Government the Army Transport Service had the entire use of the tugs and they were subject at all times to the orders and directions of the officers of the Government, and at no time during that period did the plaintiff have the use of and did not in any way interfere with or direct the operations of the said tugs.

The United States defends this suit upon the ground that the owner did not part with the possession, command, and navigation of the tugs during the period of the charter, but that it retained possession and command and performed the specific service for which the tugs were let. It is claimed that the charter was for service and not a demise, and consequently that the Government had the right to make the deductions for the time the tugs were not at its disposal.

The well-established law is that when a ship is let to hire, and the owner parts with the possession, command, and navigation of the same, the charter is to be regarded as the owner for the period of the charter, and consequently can not charge the owner of the ship with time lost during the charter period. The decision in each case depends upon the facts and circumstances surrounding the transaction, but the possession, management, and control of the vessel seem to be the vital facts upon which the decision must rest.

In Reed v. United States, 11 Wall. 591, 601, the court said: "* * * but where the vessel herself is demised or let to hire, and the general owner parts with the possession, command, and navigation of the ship, the hirer becomes the owner during the term of the contract, and, if need be, he may appoint the master and ship the mariners, and he becomes responsible for their acts."

In Leary v. United States, 14 Wall. 607, 610, the court said: "The question as to the character in which the charterer is to be
47 treated is in all cases one of construction. If the charter party let the entire vessel to the charterer with a transfer to him of its command and possession and consequent control over its navigation, he will generally be considered as owner for the voyage of service stipulated." And in the same case, page 611: "All the cases agree that entire command, possession of the vessel, and consequent control over its navigation must be surrendered to the charterer before he can be held as special owner for the voyage or other service mentioned."

In the case of United States v. Shea, 152 U. S. 178, Mr. Justice Brewer, in speaking for the court, delivered a learned opinion in which he discussed very fully the question, and at some length reviews the cases bearing on the question in issue here.

On page 189 he says: "No technical words are necessary to create a demise. It is enough that the language used shows an intent to transfer the possession, command, and control." As particularly bearing on the facts which the court has found in this case, Mr. Justice Brewer says, p. 190: "That the time for which the vessels were to be employed might be limited by the wishes of the Government does not affect the question as to whether, while so employed, they were to be under its exclusive control and management. A demise may be for a day as well as for a year and may be terminable at the will of the lessor." And again: "We thing little significance is to be attached to the provisions in reference to furnishing a crew or supplying fuel. They were matters of detail affecting the price to be paid, but throwing no particular light on the question of hiring or control. If it be said that the clause requiring the Government to furnish fuel was unnecessary in case there was a demise, it may also, in like manner, be said that the further clause as to the petitioner's furnishing a crew was unnecessary if he was to retain the management and control. Any possible inference from one clause may be set off against a different inference from the other, but neither of them destroys the significance of the operative words of transfer nor outweighs that of the action of the parties in the execution of the contract."

In the case of Plant Investment Co. v. United States, 45 C. Cls., 374, 385, Judge Booth, speaking for the court, says: "The decision in each case depends upon the peculiar facts and circumstances surrounding the transaction, and in consequence thereof it is difficult to determine with great accuracy into which class a charter party falls. In the class of cases relating to the charter of merchant vessels, wherein the parties are engaged in water transportation for profit, it seems reasonably certain that the courts have not hesitated to construe the charter party a demise of the vessel. It would not be accurate to say that in some instances vessels chartered for transportation of troops and munitions of war have not likewise been considered as a demise—in fact, always so held where nature of the service and attainment of the object of the voyage render the charterers absolute command and control necessary."

Subjecting the facts in this case to the decisions cited in so far as the charter party is concerned, it is a contract not for service but is a demise of the tugs.

From the moment that these tugs were turned over to the Army Transport Service in pursuance of the contract they were under the absolute command and control of the officers of that service.

48 The court finds as a fact that these tugs were subject at all times to the orders and directions of the officers of the Government, and that the plaintiff did not interfere with or direct the operations of the tugs. The very nature of the service to be rendered was such as to require these tugs to be absolutely under the control and subject to the orders of the officers of the Army Transport Serv-

ice. The action of the parties in the execution of the contract showed that the plaintiff surrendered the possession, command, and control of the tugs to the officers of the Government; that this surrender was required and expected; and that the officers of the Army Transport Service took charge of the tugs, navigated them, controlled them, and had absolute possession of them.

Under the law and the facts we are of opinion that the Government had no right to make the deductions complained of. A judgment will be entered for the plaintiff in the sum of $24,822.48. It is so ordered.

Graham, judge; Downey, judge; and Campbell, chief justice, concur.

Dissenting opinion

Booth, judge, dissenting:

My inability to assent to the foregoing judgment rests upon a belief that the transaction involved was a mere contract for service and not a demise of the boats. The numerous letters and acceptances which make up the contract nowhere expressly characterize it as either a contract for service or a demise of the boats; so under the decisions of the Supreme Court the question must be determined by an examination of the contracts and the conduct of the parties thereunder, always giving a construction adverse to a demise of the boats when the issue is doubtful, the courts uniformly leaning towards a contract for service rather than a demise of the vessel. Leary v. United States, 14 Wall. 607; United States v. Shea, 152 U. S. 178; Reed v. United States, 11 Wall. 591; Donald v. United States, 39 C. Cls. 357.

The rule of law applicable to an ascertainment of the difference between a contract of affreightment and a demise of a vessel is that if the control, possession, command, and navigation of the vessel passes to the charterer, and he becomes pro hac vice the owner of the same, then the transaction is a demise of the vessel, otherwise it is a mere contract for service. In one instance the parties contemplate a lease of the vessel and all that goes therewith, casting full responsibility on the owner pro hac vice. In the other, the owner engages to perform a stated service with his vessel for a stated rate of pay.

The findings disclose, first, that the service to be rendered was a per diem towage service, to be paid for by the day, for a stated period of time. It may not be successfully contended that as to the twelve-hour boats the Government assumed any responsibility for them during the night. At the close of the twelve-hour day they must of necessity be within the ownership of the plaintiff company. Such a contract and such a service is directly in conflict with the idea of a demise of the boats. Second, the plaintiff company agreed to furnish everything for the boats except coal and water, and even coal was to be furnished by the plaintiff, i. e., loaded upon the tugs at

the cost of the defendant. Furnishing everything included
49 the crew, the one essential element of navigation. Assuredly it is manifest that the defendant had no primary authority or jurisdiction over the crew. The defendant could do no more than direct the commander what cargo to take and where to go to discharge it. The defendant was without authority to enforce discipline with respect to the crew, and could not discharge a member thereof or supply a vacancy therein. One, if not the most serious, complaint of the defendant was lack of sufficient and competent crews. The plaintiff company at no time refused to acknowledge this responsibility. It is nowhere disputed that the plaintiff company employed and paid the crews and that the crews navigated the boats in accord with their judgment and experience as navigators. If the defendant was the owner of the boats pro hac vice, this one stipulation of the contracts is obviously contrary to the usual ones, wherein a demise of a vessel has been held.

An examination of the cases discloses that in cases of a demise of the vessel the owner parts with all control over the same, and he is as effectually dispossessed, for the time being, of the vessel as if he had sold the same. The charterer becomes responsible for all that happens during the life of the charter party and is vested with all the authority and power of an owner.

Nothing militates more strongly against the plaintiff's contention than the fact that it, through is own crews, navigated the boats between the points necessary to perform the required service, free from the jurisdicition and authority of the defendant. The crews were the agents of the plaintiff and not the defendant.

Third. The plaintiff company assumed and performed the duty of keeping the boats in condition during the time mentioned in the contract. Once in every thirty days it expressly covenanted to "wash the boilers to maintain operating efficiency." The plaintiff installed at its own expense, during the contract period, a fire-extinguishing apparatus and added an additional member to the crews. Surely, if the defendant was lawfully in possession as owner, this burden would have been cast on it. Operating efficiency was no concern of the plaintiff company if the defendant was operating the boats as owner thereof. If the defendant took the boats over and was operating them, the duty of keeping them in repair and good order belonged to it, and the cases so hold.

Fourth. The parties themselves have by their own conduct construed the contracts as one for service and not as a demise of the vessels. The "Ira M. Hedges" sank while towing a barge of coal from Perth Amboy, N. J., to the Erie Basin Dry Dock, and the plaintiff company, at its own expense, raised and repaired her. Such a manifestation of ownership and the assumption of the responsibilities of ownership indisputably stamp the transaction as a direct and unequivocable acknowledgment that title and possession

of the boats remained in the plaintiff company. No claim is made in this suit for the expense incurred in this respect and possession may have been said or done at the time the plaintiff company did as set forth above, and paid the damages incident to the event. The available cases, without exception, in charter parties construed as a demise of a vessel hold that in cases of collision and sinking the pro hac vice owner is responsible for the losses occasioned thereby. Plant Investment Co. *v.* United States, 45 C. Cls. 374.

50 The "Hedges" was in the physical possession of the plaintiff company during the whole period of her reconditioning. She was of no service to the defendant for a little over fifty-four days out of the charter party time, at a per diem expense of $150 a day, or more than $8,100, being in actual use but twenty-six days out of the full time required. While this is the most aggravated incident of the entire transaction, it necessarily impresses as a clear recognition by the plaintiff company of its legal liability under the contracts to assume the burdens of the actual navigation of the boats. The defendant was in urgent need of tug service, the war required the use of every available instrumentality to get the Army overseas, and it is not to be presumed that it would have allowed, under the contracts, this degree of remissness if both the opportunity and the power and authority existed to forestall it. It might have taken over the boats as it did other shipping facilities, and thereby left no doubt as to the character of the transaction. However, in my opinion, it pursued the opposite course and simply employed the vessels for a stated per diem service and a stated per diem rate of pay, without the assumption of title and the correlative responsibilities of an owner pro hac vice.

Finding V, if I correctly understand it, is simply intended to disclose the service rendered by the boats, i. e., that while engaged in the service contracted for the defendant had the use of the boats and gave explicit orders as to what towage they were to do, and of course, while so engaged, they were under the exclusive orders of the defendant. The plaintiff could not avail itself of the boats during this period in any other towage service without violating its contracts. The decided cases, however, do not hold facts of this nature as determinative of the issue involved. It is self-evident that under a contract for service the defendant would necessarily have the direction of the boats, and under the terms of the contracts they were subject at all times stated in the contracts to its orders. They were employed by the defendant to do such towage service as it directed. These facts, however, do not convert a contract for service of the boats into a demise of the same. The mere giving of orders as to what barges should be towed, when they should be towed, and by what boats, from point to point, is not in law sufficient to characterize the transaction as taking that measure of control over the boats contemplated in a demise of the same.

The plaintiff's crews navigated the boats during all the period of time covered by the contracts. The boats were in the possession of

crews employed and paid for by the plaintiff; agents of the plaintiff operated the boats; they directed their course from point of departure to destination through the waters of the harbor; they, as agents of the plaintiff, were responsible for the safety of the boats and cargo aboard. No one might contend that the defendant assumed responsibility for the safe navigation of a boat, when it was without authority to select or discharge the crew which was to navigate it. As was said in Pollock *v.* Cleveland Shipbuilding Co., 56 Ohio St. 655:

"Navigation is the science or art of conducting a ship from one place to another, and the science or art of ascertaining the
51 position and directing the course of vessels, especially at sea, by astronomical operations or calculations; a nautical science or art; shipping."

Towage service by tugboats is not the kind of marine service usually involving a demise of tugboats. The very nature of the service itself does not, unless especially contracted for, suggest a taking over of the boats themselves. In the ordinary course of business it would be considered a hired service and no more. The cargo transported is usually aboard a transport of the charterer, and the service of the boats is limited to towing the same from point of embarkation to point of discharge. The crew of the tug navigates the same, and the crew of the transport navigates it in keeping with the tug's course.

# APPENDIX TO FINDING III

*Statement of accounts of Cornell Steamboat Co. for hire of tugs to Army Transport Service, New York*

JANUARY, 1918

| 1 | 2 | 3 | 4 | 5 | 6 | 6 | Deductions | | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Name of tug | Number of days chartered | Rate | Amount | Coal | Water | Total | 8 Number of hours off duty | 9 Rate per hour | Amount | Amount paid on account | Amount due | Overpaid |
| Ellen M. Ronan | 31 | 24 hrs., $150.00 | $4,650.00 | $1,170.00 | $43.50 | $5,863.50 | 192 | 6.25 | $1,200.00 | $4,663.50 | | |
| Ira M. Hedges | 31 | 24 hrs., 150.00 | 4,650.00 | 455.00 | 7.50 | 5,112.50 | 552 | 6.25 | 3,450.00 | 3,450.00 | $1,662.50 | |
| S. L. Crosby | 1 | 24 hrs., 150.00 | 150.00 | 65.00 | 1.50 | 216.50 | 12 | 6.25 | 75.00 | 141.50 | | |
| G. W. Decker | 4 | 24 hrs., 150.00 | 600.00 | 195.00 | 4.50 | 799.50 | 12 | 6.25 | 75.00 | 724.50 | | |
| H. D. Mould | 23 | 12 hrs., 100.00 | 2,450.00 | 32.50 | 1.50 | 2,484.00 | 71 | 8.33 | 591.67 | 1,892.33 | | |
| Do | 1 | 24 hrs., 150.00 | | | | | | | | | | |
| Wilson P. Foss | 30 | 12 hrs., 80.00 | 2,550.00 | 507.00 | 46.50 | 3,103.50 | 41 | 6.66 | 273.30 | 2,697.25 | 132.95 | |
| Do | 1 | 24 hrs., 150.00 | | | | | | | | | | |
| E. J. Foster | 25 | 12 hrs., 75.00 | 2,775.00 | 617.00 | 46.50 | 3,438.50 | 24 | 6.25 | 150.00 | 3,138.50 | 150.00 | |
| Do | 6 | 24 hrs., 150.00 | | | | | | | | | | |
| Victoria | 31 | 24 hrs., 150.00 | 4,650.00 | 1,046.50 | 39.00 | 5,735.50 | 100½ | 6.25 | 628.12 | 5,185.50 | | $78.12 |
| J. G. Rose | 31 | 24 hrs., 150.00 | 4,650.00 | 663.00 | 37.50 | 5,350.00 | 126 | 6.25 | 787.50 | 4,563.00 | | |
| Charlie Lawrence | 11 | 12 hrs., 75.00 | 1,125.00 | 357.50 | 19.50 | 1,502.00 | 17 | 6.25 | 106.25 | 1,352.00 | 43.75 | |
| Do | 2 | 24 hrs., 150.00 | | | | | | | | | | |
| Primrose | 6 | 12 hrs., 75.00 | 4,200.00 | 1,144.00 | 45.00 | 5,389.00 | 20 | 6.25 | 125.00 | 5,214.00 | 50.00 | |
| Do | 25 | 24 hrs., 150.00 | | | | | | | | | | |
| | 164 | 24 hrs., 150.00 | | | | | 71 | 8.23 | | | | |
| | 30 | 12 hrs., 80.00 | | | | | 1,096 | 6.25 | | | | |
| | 42 | 12 hrs., 75.00 | | | | | 41 | 6.66 | | | | |
| | 23 | 12 hrs., 100.00 | | | | | | | | | | |
| Total | 259 | | 32,450.00 | 6,252.50 | 246.00 | 38,999.00 | | | 7,461.84 | 33,022.08 | 376.70 | 1,865.62 |

## APPENDIX TO FINDING III—Continued

*Statement of accounts of Cornell Steamboat Co. for hire of tugs to Army Transport Service, New York*—Continued

FEBRUARY, 1918

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | Deductions | | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Name of tug | Number of days chartered | Rate | Amount | Coal | Water | Total | 8 Number of hours off duty | 9 Rate per hour | Amount | Amount paid on account | Amount due | Overpaid |
| Foss, W. P. | 28 | 12 hrs., $80.00 | $2,240.00 | $396.50 | $42.00 | $2,678.50 | 60 | 6.66 | $3,999.60 | $2,438.50 | | $159.60 |
| Foster, R. J. | 28 | 12 hrs., 75.00 | 2,100.00 | 429.00 | 42.00 | 2,571.00 | 48 | 6.25 | 300.00 | 2,271.00 | | |
| Hedges, Ira M. | 28 | 24 hrs., 150.00 | 4,200.00 | | | 4,200.00 | 576 | 6.25 | 3,600.00 | 600.00 | | |
| Mould, H. D. | 28 | 12 hrs., 100.00 | 2,800.00 | | | 2,800.00 | 84 | 8.33 | 700.00 | 2,100.28 | | .28 |
| Primrose | 28 | 24 hrs., 150.00 | 4,200.00 | 754.00 | 34.50 | 4,988.50 | 153 | 6.25 | 956.25 | 4,032.25 | | |
| Ronan, E. M. | 28 | 24 hrs., 150.00 | 4,200.00 | 227.50 | 39.00 | 4,466.50 | 59 | 6.25 | 368.75 | 4,104.00 | | 6.25 |
| Rose, J. G. | 28 | 24 hrs., 150.00 | 4,200.00 | 487.50 | 37.50 | 4,725.00 | 12 | 6.25 | 75.00 | 4,650.00 | | |
| Victoria | 28 | 24 hrs., 150.00 | 4,200.00 | 845.00 | 37.50 | 5,082.50 | 48 | 6.25 | 300.00 | 4,782.50 | | |

MARCH, 1918

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Foss, W. P. | 31 | 12 hrs., $80.00 | $2,480.00 | $493.00 | $46.50 | $3,019.50 | 96 | 6.66 | $640.00 | $2,436.17 | | $56.67 |
| Foster, R. J. | 31 | 12 hrs., 75.00 | 2,325.00 | 536.50 | 46.50 | 2,908.50 | 52 | 6.25 | 325.00 | 2,583.00 | | |
| Primrose | 31 | 24 hrs., 150.00 | 4,650.00 | 1,073.00 | 44.50 | 5,767.50 | 252 | 6.25 | 1,575.00 | 4,986.25 | | 793.75 |
| Hedges, Ira M. | 31 | 24 hrs., 150.00 | 4,650.00 | | 36.00 | 4,686.00 | 90 | 6.25 | 550.00 | 4,123.50 | $12.50 | |
| Ronan, E. M. | 31 | 24 hrs., 150.00 | 4,650.00 | | 39.60 | 4,689.60 | 108 | 6.25 | 576.56 | 4,036.88 | | 12.44 |
| Rose, J. G. | 31 | 24 hrs., 150.00 | 4,650.00 | 1,029.50 | 37.40 | 5,717.00 | 194 | 6.25 | 1,215.62 | 4,907.63 | | 406.25 |
| Victoria | 31 | 24 hrs., 150.00 | 4,650.00 | 986.00 | 36.00 | 5,672.00 | 168 | 6.25 | 1,050.00 | 4,625.13 | | 3.13 |
| | 295 | 24 hrs., 150.00 | | | | | 1,760 | 6.25 | | | | |
| | 59 | 12 hrs., 80.00 | | | | | 156 | 6.66 | | | | |
| | 28 | 12 hrs., 100.00 | | | | | 84 | 8.33 | | | | |
| | 59 | 12 hrs., 75.00 | | | | | | | | | | |
| Total | 441 | | 64,735.00 | 7,257.50 | 518.50 | 63,971.50 | | | 12,731.78 | 52,677.09 | 12.50 | 1,438.37 |

APRIL, 1918

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Foss, W. P. | 30 | 12 hrs., $80.00 | $2,400.00 | $487.50 | $45.00 | $2,932.50 | 150 | 6.66 | $1,000.00 | $2,166.90 | | $234.40 |
| Foster, R. J. | 30 | 12 hrs., 75.00 | 2,250.00 | 510.00 | 45.00 | 2,805.00 | 132 | 6.25 | 825.00 | 1,980.00 | | |
| Primrose | 11 | 24 hrs., 150.00 | 1,650.00 | 112.50 | 45.50 | 1,767.00 | 239 | 6.25 | 1,493.75 | 273.25 | | |
| Hedges, Ira M. | 11 | 24 hrs., 150.00 | 1,650.00 | | 16.50 | 1,666.50 | 180 | 6.25 | 1,125.00 | 541.50 | | |
| Ronan, E. M. | 11 | 24 hrs., 150.00 | 1,650.00 | | 16.50 | 1,666.50 | 14 | 6.25 | 87.50 | 1,579.00 | | |

MAY, 1918

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Foss, W. P. | 31 | 12 hrs., $80.00 | $2,480.00 | $472.50 | $46.50 | $2,999.00 | 48 | 6.66 | $320.00 | $2,679.00 | | |
| Foster, R. J. | 31 | 12 hrs., 75.00 | 2,325.00 | 487.50 | 46.50 | 2,859.00 | 72 | 6.25 | 450.00 | 2,484.00 | | $75.00 |

JUNE, 1918

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Foss, W. P. | 30 | 12 hrs., $80.00 | $2,400.00 | $457.50 | $45.00 | $2,902.50 | 72 | 6.66 | $480.00 | $2,502.50 | | $80.00 |
| Foster, R. J. | [1] 31 | 12 hrs., 75.00 | 2,325.00 | 502.50 | 46.50 | 2,874.00 | 60 | 6.25 | 375.00 | 2,499.00 | | |
| | 33 | 24 hrs., 150.00 | | | | | 270 | 6.66 | | | | |
| | 91 | 12 hrs., 80.00 | | | | | 697 | 6.25 | | | | |
| | 92 | 12 hrs., 75.00 | | | | | | | | | | |
| Total | 216 | | 19,130.00 | 3,930.00 | 312.00 | 22,472.00 | | | 6,156.25 | 16,705.15 | | 389.40 |
| | 492 | 24 hrs., 150.00 | | | | | 155 | 8.33 | | | | |
| | 180 | 12 hrs., 80.00 | | | | | 426 | 6.66 | | | | |
| | 51 | 12 hrs., 100.00 | | | | | 3,594 | 6.25 | | | | |
| | 193 | 12 hrs., 75.00 | | | | | | | | | | |
| Grand total | 916 | | 116,315.00 | 16,540.00 | 1,076.50 | 125,442.50 | 4,175 | | 26,349.87 | 102,404.32 | $389.20 | 3,693.39 |
| Balance due U. S. Government. | | | | | | | | | | 1,782.50 | | 3,304.19 |
| | | | | | | | | | | | | 1,787.50 |
| | | | | | | | | | | 100,621.82 | | |
| | | | | | | | | | | | | 1,516.69 |

[1] Foster includes July 1, when charter expired.

55 V. *Judgment*

At a Court of Claims held in the city of Washington on the twenty-ninth day of October, A. D. 1923, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order, adjudge, and decree that the plaintiff, as aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of twenty-four thousand eight hundred and twenty-two dollars and forty-eight cents ($24,822.48).

By the Court.

VI. *Defendant's application for appeal*

From the judgment rendered in the above-entitled cause on the 29th day of October, 1923, in favor of the claimant, the defendants, by their Attorney General, on the 11th day of January, 1924, make application for, and give notice of an appeal to the Supreme Court of the United States.

ROBERT H. LOVETT,
*Assistant Attorney General.*

Filed, Jan. 11, 1924.

VII. *Order of court allowing defendant's application for appeal*

It is ordered by the court that the defendant's application for appeal be and the same is allowed.

Entered January 21, 1924.

56 In Court of Claims of the United States

[Title omitted.]

*Clerk's certificate*

I, F. C. Kleinschmidt, assistant clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law and opinion of the court by Hay, J.; of the judgment of the court; of the defendant's application for an appeal; of the order of the court allowing defendant's application for appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this twenty-fourth day of January, A. D. 1924.

[SEAL.]

F. C. KLEINSCHMIDT,
*Assistant Clerk Court of Claims.*

[Indorsed on cover: File No. 30082. Court of Claims. Term No. 265. The United States, appellant, *vs.* Cornell Steamboat Company. Filed January 26, 1924. File No. 30082]

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